

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 0-565-792-768
[REDACTED])	
Petitioner.)	
)	DECISION
)	

On August 4, 2015, the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NODD) to [Redacted] (taxpayer) proposing tax and interest for taxable year 2014 in the total amount of \$363. The Commission, having reviewed the file, hereby issues its decision.

The sole issue for this decision is whether the taxpayer is entitled to the dependency exemption deductions for his daughter, [Redacted] The taxpayer filed his 2014 Idaho individual income tax return claiming the dependency exemption deduction and the return was one of two returns that claimed deductions for his daughter. The taxpayer's response to a request for information letter was that he was not the custodial parent and his daughter spent no days in his custody. He protested the NODD issued as a result of denying the dependent exemption deductions.

As part of his protest, the taxpayer provided part of a Judgment and Order (Judgment). Paragraph 5 on page 4 of the Judgment states the taxpayer may claim the dependency exemption for state tax purposes.

The file was referred to the Legal/Tax Policy Division for administrative review. A letter outlining the alternatives for redetermining a protested NODD, including his rights to an informal hearing, was sent to the taxpayer. An informal hearing was held telephonically on December 1, 2015, with the taxpayer and [Redacted]. The tax policy specialist discussed the protest with the taxpayer including the rules used to determine which parent may claim a

dependent exemption deduction when the parents are divorced or separated. The taxpayer said he would withdraw the protest. No protest withdrawal was received.

Deductions are a matter of legislative grace and taxpayers bear the burden of proving they are entitled to the deductions claimed. INDOPCO, Inc. v. Commissioner, 503 U.S. 79, 84, 112 S. Ct. 1039, 117 L.Ed.2d 226 (1992); New Colonial Ice Co. v. Helvering, 292 U.S. 435, 440, 54 S. Ct. 788, 78 L. Ed. 1348 (1934). Internal Revenue Code (IRC) § 151(c) allows a taxpayer a deduction of the exemption amount for each dependent as defined in IRC § 152.

IRC § 152(a) defines a dependent as either a “qualifying child” or a “qualifying relative.” A qualifying child is an individual who (1) bears a certain relationship to the taxpayer, (2) has the same principal place of abode as the taxpayer for more than one-half of the taxable year, (3) meets certain age requirements, and (4) has not provided over one-half of the individual’s own support for the taxable year. *See* IRC § 152(c)(1)-(3).

A qualifying relative is an individual 1) who bears a certain relationship to the taxpayer, 2) whose gross income for the taxable year is less than the exemption amount, 3) with respect to whom the taxpayer provides over one-half of the individual’s support for the taxable year, and 4) who is not a qualifying child of the taxpayer or of any other taxpayer for the taxable year. *See* IRC § 152(d)(1) – (2).

IRC § 152(e) provides a special rule for parents who are divorced or who do not live together. It states in pertinent part:

- (1) In general.
Notwithstanding subsection (c)(1)(B), (c)(4), or (d)(1)(C), if—
 - (A) a child receives over one-half of the child’s support during the calendar year from the child’s parents—
 - (i) Who are divorced or legally separated under a decree of divorce or separate maintenance,
 - (ii) who are separated under a written separation agreement, or

(iii) who live apart at all times during the last 6 months of the calendar ears, and—

(B) such child is in the custody of 1 or both of the child's parents for more than one-half of the calendar year, such child shall be treated as being the qualifying child or qualifying relative of the noncustodial parent for a calendar year if the requirements described in paragraph (2) or (3) are met.

(2) Exception where custodial parent releases claim to exemption for the year.

For purposes of paragraph (1), the requirements described in this paragraph are met with respect to any calendar year if—

(A) the custodial parent signs a written declaration (in such manner and form as the Secretary may by regulations prescribe) that such custodial parent will not claim such child as a dependent for any taxable year beginning in such calendar year, and

(B) the noncustodial parent attaches such written declaration to the noncustodial parent's return for the taxable year beginning during such calendar year.

IRC § 152(e)(2) clearly requires that the custodial parent sign a written declaration releasing the dependent exemption in order for the noncustodial parent to claim the child's dependent exemption:

The control over a child's dependency exemption conferred on the custodial parent by section 152(e)(2) was intended by Congress to simplify the process of determining who is entitled to claim dependency exemptions for children of marriage. See H. Rept. 98432 (Part 2) at 1498 (1984). To make section 152(e)(2) work as intended, that control must be preserved by insisting on adherence to the requirements of section 152(e)(2). Simply attaching a State court order that is not signed by the custodial parent to the return of the noncustodial parent does not satisfy the express statutory requirements of section 152(e)(2)(A). Miller v. CIR, 114 T.C. 184, (2000).

The taxpayer does not claim he is the custodial parent. He relies on the Judgment to claim the dependent for tax purposes. Even though the Judgment provides that the taxpayer is entitled to the dependency exemption deduction for his daughter, the mere fact that the state court granted the taxpayer the right to claim the dependency exemption deduction is immaterial because a state court cannot determine issues of federal tax law. See Commissioner v. Tower, 327 U.S. 280 (1946); Kenfield v. United States, 783 F.2d 966 (10th Cir.1986); Nieto v. Commissioner, T.C. Memo.1992-296.

For taxable year 2014, the taxpayer has not claimed he was the custodial parent of the child and does not have a signed release from the custodial parent. Therefore, the taxpayer is not entitled to the dependency exemption deductions.

IT IS ORDERED that the taxpayer pay the following amount of tax and interest:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2014	\$363	\$14	\$377

Interest is calculated through March 31, 2016.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayer's right to appeal this decision is enclosed.

DATED this _____ day of _____ 2015.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2015, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[REDACTED]

Receipt No.
